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September 25, 2018

Hon. Paul A. Engelmayer
United States District Court
Southern District of New York
40 Foley Square, Room 2201
New York, NY 10007
engelmayer@nysd.uscourts.gov

VIA CM/ECF

Re: Dubov v. Lewis et al., No. 18 CV 3854 (PAE) (GWG)

Your Honor,

I represent all Defendants in the captioned case.

Pursuant to Rule 1.E of the Court's Individual Rules and Practices, I write to request that the due date for Defendants' opposition to Plaintiff's motion to dismiss (ECF Doc. No. 38) be extended to October 24, 2018.

Defendants seek this extension so that issues raised by Plaintiff's motion may first be addressed at the initial pretrial conference set for October 10, 2018.

* * *

Plaintiff filed a motion to dismiss Defendants' amended counterclaims on September 19 and 20, 2018. (ECF Docs. Nos. 38-41.)

In her moving papers, Plaintiff argues that the Court should accept as "uncontroverted" all statements in the more than 90 pages of exhibits annexed to Plaintiff's Complaint. (See Pls.' Mem. of Law (ECF Doc. No. 41 at pages 11-12 of 28).) The motion ignores Defendants' unambiguous denials, instead seizing on the statement in Defendants' Answer that "document[s] incorporated by reference [in the Complaint] speak for themselves." (Id. at page 6 of 28.) The entire Rule 12(b)(6) motion proceeds from the erroneous premise that Plaintiff's allegations are established as judicial admissions.

Defendants respectfully disagree. I so notified counsel for Plaintiff promptly upon receipt of Plaintiff's moving papers. To set aside any potential disagreement about the content or effect of Defendants' pleading, Defendants offered to amend the Answer to remove statements that exhibits to the Complaint "speak for themselves." Plaintiff declined consent to amendment.

Defendants also requested an extension of time to respond to Plaintiff's motion until October 24, 2018 - fourteen days after the initial pretrial conference.

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At least two issues raised by the motion should be addressed at the conference: (1) Plaintiff's argument that the contents of exhibits to the Complaint are admitted and conclusively established; and (2) Defendants' request to file an amended Answer. Defendants submit that consideration of these matters may avoid unnecessary motion practice and promote the just and inexpensive determination of this action. See Fed. R. Civ P. 1. By addressing at the conference "amending the pleadings if necessary or desirable," Fed. R. Civ. P. 16(c)(2)(B), the Court may "discourag[e] wasteful pretrial activities," Fed. R. Civ .P. 16(a)(3).

Plaintiffs do not consent to the extension.

* * *

Pursuant to Rule 1.E of the court's Individual Rules and Practices: (1) the original due date for Defendant's opposition brief is October 4, 2018 (LCR 6.1(b)); (2) the proposed new due date is October 24, 2018; (3) there has been no prior request for extension of this due date; (4) Plaintiff does not consent to the request; and (5) the reasons for Plaintiff's refusal of consent are set forth in an email from Plaintiff's counsel to Defendants' counsel annexed hereto as Exhibit A.

I thank the Court for its consideration.

Respectfully submitted,



Wesley M. Mullen

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Defendants' motion is denied. Defendants' reply remains due on October 4, 2018. Defendants are welcome to preview any request to file an amended Answer in the joint letter parties will submit in advance of the initial pretrial conference set for October 10, 2018. The Court will consider such a request at that conference.

SO ORDERED.



PAUL A. ENGELMAYER
United States District Judge